STATE OF MICHIGAN

COURT OF APPEALS

GEORGIA L. MURRAY,

Plaintiff-Appellee,

v

CHRYSLER CORPORATION,

Defendant-Appellant.

UNPUBLISHED
February 14, 2003

No. 234153
Macomb Circuit Court
LC No. 1995-003109-CK

Before: Griffin, P.J., and White and Murray, JJ.

PER CURIAM.

Defendant Chrysler Corporation appeals as of right the circuit court's order denying defendant's motion for mediation sanctions against plaintiff, after defendant prevailed at arbitration and a judgment of no cause of action was entered on the arbitration award. We reverse and remand for further proceedings in accordance with this opinion.

I

Plaintiff filed a complaint against defendant alleging breach of contract, discrimination under the Michigan Civil Rights Act, MCL 37.2101 *et. seq*., and retaliatory discharge in violation of plaintiff's civil rights. In 1996, the case was submitted to a mediation panel and the mediators found for plaintiff in the amount of $65,000. The mediation evaluation was accepted by defendant but rejected by plaintiff. Thereafter, the parties stipulated to submit the case to arbitration and the circuit court entered an order for binding arbitration, referring the matter to arbitration "in accordance with the attached Agreement to Arbitrate." The agreement provided in relevant part:

> The Arbitrator is empowered to award any and all damages and equitable relief plaintiff may have obtained in the court action under the Elliott-Larsen [Michigan] Civil Rights Act, including attorneys' fees and costs. *Chrysler shall have the right to seek mediation sanctions, in accordance with the Michigan Court Rules, after a judgment has been rendered upon the Arbitrator's award*. [Emphasis added.]

Following comprehensive arbitration proceedings, the arbitrator issued his decision determining that plaintiff had not shown any basis for recovery and that an award of no cause of

action should be entered in defendant's favor. An order confirming the arbitration award and entering judgment in favor of defendant was entered by the circuit court on July 24, 2000. Defendant then moved for mediation sanctions pursuant to MCR 2.403(O),[1] consisting of attorney fees and costs, in the amount of $78,847.25. Following a hearing on the motion, the trial court took the matter under advisement and, on February 23, 2001, issued an opinion and order denying defendant's motion in its entirety. In rendering its decision, the trial court sua sponte raised, and held to be dispositive, an issue not argued by the parties; namely, the court found that when a matter is submitted to arbitration and decided by arbitration, mediation sanctions may not thereafter be awarded.[2] The trial court explained:

> In *St. George Greek Orthodox Church of Southgate, Michigan v Laupmanis Associates, PC*, 204 Mich App 278, 283; 514 NW2d 516 (1994), the court explained that a matter decided by arbitration or by a judgment entered on the arbitration award has not been decided by a "verdict" as defined in MCR 2.403(O)(2). *Id*. at 283-284. Consequently, a party may not seek sanctions under MCR 2.403(O) when a matter has been decided by arbitration after having been mediated, regardless of whether a judgment has been entered on the arbitration award. *Id*. at 284-285.

In denying defendant's motion for reconsideration, the trial court, again citing *Saint George, supra*, reiterated its conclusion that "a party may not seek sanctions under MCR 2.403(O) when a matter has been decided by arbitration after having been mediated," and thus, pursuant to the parties' written agreement to arbitrate, "defendant's 'right' to seek mediation sanctions was subordinate to the Michigan Court Rules." Defendant now appeals.

II

A trial court's decision to grant or deny a motion for mediation sanctions is reviewed de novo because it involves a question of law, not a discretionary matter. *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 218; 625 NW2d 93 (2000); *Elia v Hazen*, 242 Mich App 374, 376-377; 619 NW2d 1 (2000); *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 129; 573 NW2d 61 (1997).

MCR 2.403(O) governs the liability of a party who rejects a mediation evaluation to pay the opposing party's costs. It states in pertinent part:

> (1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more

[1] With the amendment of MCR 2.403, effective August 1, 2000, "mediation" is now referred to as "case evaluation." However, in this opinion, we will use the terminology in effect at the time of the parties' mediation and trial court proceedings.

[2] A review of the record indicates that plaintiff opposed the motion on the grounds that the claimed attorney fees were excessive and the purported costs and other expenses were improperly charged; plaintiff did not argue that mediation sanctions were not recoverable pursuant to the parties' stipulation or that defendant was not otherwise legally entitled to mediation sanctions.

> favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation.
>
> (2) For purposes of this rule "verdict" includes,
>
> (a) a jury verdict,
>
> (b) a judgment by the court after a nonjury trial,
>
> (c) a judgment entered as a result of a ruling on a motion after rejection of the case evaluation.

Interpreting this court rule in the context of a case that progressed to arbitration, after both parties rejected a mediation evaluation, and subsequently culminated in confirmation of the arbitration award of no cause of action and entry of a judgment thereon, this Court in *Saint George, supra* at 283-284, held that the prevailing party was not allowed to seek mediation sanctions under MCR 2.403(O) because an arbitration hearing is not a trial and an arbitration award is not a "verdict" within the meaning of MCR 2.403(O)(1) and (2).

Relying on *Saint George, supra*, the circuit court in the instant case concluded that mediation sanctions are not recoverable under MCR 2.403(O) when a case is resolved through arbitration and, thus, defendant was precluded from seeking sanctions. However, as defendant aptly points out, *Saint George* is factually distinguishable from the instant case because in that case the parties did not expressly stipulate to retain the right to pursue mediation sanctions as did the parties herein. Although we agree with the circuit court that pursuant to *Saint George, supra*, mediation sanctions are in most circumstances not recoverable under MCR 2.403(O) when a case is resolved through arbitration, in this instance the parties crafted an agreement to arbitrate by which they mutually agreed to allow mediation sanctions.

Indeed, it is well established that stipulations "are favored by the judicial system and are generally upheld." *Napora v Napora*, 159 Mich App 241, 246; 406 NW2d 197 (1986). See also *Conel Development, Inc v River Rouge Savings Bank*, 84 Mich App 415, 419, n 5; 269 NW2d 621 (1978). The policy favoring stipulations is evident in the court rules. See, generally, MCR 2.116(A), 2.119(D), 2.316(B)(1), 2.504(A)(1)(b), 2.507, 2.512(A), 7.310. "Stipulations are binding upon the parties and, although the courts have some discretion in setting them aside, they should be enforced unless good cause is shown to the contrary." *People v Williams*, 153 Mich App 582, 587; 396 NW2d 805 (1986), citing 73 Am Jur 2d, Stipulations, §§ 8, 11, 13, pp 543-545, 546-547, 548-550.

Stipulations, like contracts, are agreements reached by and between the parties. *Phillips v Jordan*, 241 Mich App 17, 21; 614 NW2d 183 (2000). Thus, stipulations are construed under the same rules of construction as contracts:

> "Rules applicable to the construction of contracts, * * * have generally been held applicable in the construction of stipulations, and they have been construed in accordance therewith. The primary rule in the construction of stipulations is that the court must, if possible, ascertain and give effect to the

intent of the parties." 83 CJS, Stipulations, § 11. [*Kline v Kline*, 92 Mich App 62, 72-73; 284 NW2d 488 (1979).]

See also *Phillips, supra* at 21; *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 394; 573 NW2d 336 (1997); *Eaton Co Bd of Co Rd Comm'rs v Schultz*, 205 Mich App 371, 379-380; 521 NW2d 847 (1994).

"As a general rule stipulations should receive a fair and liberal construction consistent with the parties' apparent intention." *Williams, supra* at 586-587, citing 73 Am Jur 2d, Stipulations, § 7, pp 541-543. A stipulation is to be construed as a whole and in light of the facts and circumstances surrounding its making. *Nuriel v Young Women's Christian Ass'n of Metropolitan Detroit*, 186 Mich App 141, 147; 463 NW2d 206 (1990). "Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement." *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). However, where an ambiguity exists, a court must interpret the contract so as to effectuate the intent of the parties, if ascertainable. *Fox v Detroit Trust Co*, 285 Mich 669, 675-677; 281 NW 399 (1938). To determine if a contract is ambiguous, the language used is given its ordinary and plain meaning to see if "'its words may reasonably be understood in different ways.'" *Rossow v Brentwood Farms Development Co*, 251 Mich App 652, 658; 651 NW2d 458 (2002), quoting *Trierweiler v Frankenmuth Mut Ins Co*, 216 Mich App 653, 656-657; 550 NW2d 577 (1996).

In this case, the pertinent portion of the agreement to arbitrate states that "Chrysler shall have the right to seek mediation sanctions, in accordance with the Michigan Court Rules, after a judgment has been rendered upon the Arbitrator's award." Examining this language, the circuit court determined that because the stipulation allowing defendant to seek mediation sanctions also specified doing so "in accordance with the Michigan Court Rules," the parties did not intend to alter the court rules and defendant's right to seek sanctions was subordinate to the court rules. Consequently, because an arbitration award does not qualify as a "verdict" for purposes of MCR 2.403(O)(1) and (2), *Saint George, supra*, the circuit court concluded that defendant is not permitted to seek sanctions under the present circumstances.

However, reviewing the language of the agreement to arbitrate de novo,[3] we conclude that the stipulation is susceptible to differing reasonable interpretations and thus is ambiguous. The opposing appellate arguments of the parties regarding the meaning of the disputed language underscore this ambiguity. Defendant maintains that in practical effect, by agreeing that defendant could seek mediation sanctions should it prevail at arbitration, the parties stipulated that the arbitration result would constitute a "verdict" under MCR 2.403(O). Defendant argues that the agreement's reservation of the right to seek mediation sanctions was not simply a windfall to defendant; rather, it was consideration for defendant's agreement in the immediately preceding provision of the agreement that plaintiff would have the right to attorney fees and costs under the civil rights act should she prevail at arbitration. In other words, the effect of

[3] Whether the terms of a contract are ambiguous is a question of law that this Court reviews de novo. *Rossow, supra* at 658.

these two provisions was an agreement by the parties that whichever party prevailed at arbitration would be able to recover attorney fees and costs.

Plaintiff, on the other hand, contends that the agreement to arbitrate allowed defendant to seek mediation sanctions, but did not guarantee that it would receive such sanctions if it prevailed. Plaintiff notes that the agreement did not expressly state that the arbitration result was equivalent to a "verdict" for purposes of MCR 2.403(O)(1) and (2).

We conclude that the language in question may reasonably be understood in different ways. *Rossow, supra* at 658. The parties' contrary interpretations of the stipulation emphasize the need for further examination of their underlying intentions when they entered into the agreement to arbitrate, particularly in light of the fact that the trial court sua sponte raised this issue when it took the matter under advisement, *after* the hearing on defendant's motion.[4] We therefore reverse the circuit court's order denying defendant's motion for mediation sanctions and remand for a full evidentiary hearing on the merits regarding the true intent of the parties when they entered into the agreement to arbitrate and specifically stipulated that defendant could seek mediation sanctions "in accordance with the Michigan Court Rules."

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Helene N. White
/s/ Christopher J. Murray

[4] The circuit court in its opinion makes no mention of an attempt to ascertain the intent of the parties to the agreement.